

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:19-CV-00128-GCM**

CHRISTOPHER D. ELLERBE,

Plaintiff,

v.

**JOHN A HERRING,
KEVIN INGRAM,
FNU RUE,
KEITH LAMBERT,
FNU SELLERS,
FNU PRESTON,**

Defendants.

ORDER

THIS MATTER comes before the Court on Plaintiff’s pro se Motion for Entry of Default and Default Judgment (ECF No. 54). Plaintiff argues that Defendants “were properly served but . . . failed to otherwise defend as the rules required.” ECF No. 54 at 1. Specifically, Plaintiff claims that the Defendants’ failure to file dispositive motions by the deadline set by the Court entitles him to entry of a default and a default judgment. *Id.* at 1–2.

The Court will deny the motion. Rule 55(a) provides for an entry of default only when the party against whom a judgment for affirmative relief is sought “has failed to plead or otherwise defend.” Fed. R. Civ. P. 55(a). As the text of the rule suggests, “[a] party precludes default by pleading in response to a claim within the time allowed.” *See* 10 James William Moore et al., Moore’s Federal Practice – Civil § 55.11(2)(a)(i) (3d ed. 2021). Pleadings include answers to the complaint. *See* Fed. R. Civ. P. 7(a)(1).

Here, each of the six Defendants has filed an answer to the complaint, and that is all that is required to avoid an entry of default. The penalty for Defendants' failure to file a timely dispositive motion is not a default judgment: the penalty is having to proceed to trial.

IT IS THEREFORE ORDERED that the Plaintiff's Motion for Entry of Default and Default Judgment (ECF No. 54) is **DENIED**.

SO ORDERED.

Signed: November 10, 2021

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

